

Remarks/Arguments

I. Invention Election

In response to the election requirement set forth in the January 5, 2007 Office Action, Applicants elect the invention in Group I, including claims 1-31 and 35-37, drawn to a patellar prosthesis apparatus and claims 32-34 are withdrawn. Claim 37 has been amended to correct a typographical error.

I. Species Election

The Office Action further included a requirement for an election of one base and one articulating subcomponent from amongst a number of embodiments of bases and nineteen embodiments of articulating subcomponents “to make up one embodiment of the patellar prosthesis as claimed in this Application.” (Office Action at page 2). The Applicants respectfully reconsideration and withdrawal of the species restriction requirement.

As an initial matter, the purpose for this “requirement” is not readily apparent, particularly since the manner in which the “requirement” is set forth does not comport with any procedure set forth in the MPEP. Additionally, the Examiner has not cited any authority for making such a requirement. Furthermore, there is no acknowledgment of a generic claim for any of the asserted species, notwithstanding the fact that all of the base species and all of the articulating subcomponent species identified by the Examiner, with the exception of articulating component 17 include limitations set forth in claim 1.

Therefore, because the Examiner has not made a proper restriction requirement, the requirement to elect a single embodiment of a base and single embodiment of an articulating subcomponent “to make up one embodiment of the patellar prosthesis as claimed in this Application” should be withdrawn.

Because the restriction requirement appears to be improper, it is not clear that 37 CFR 1.143 applies. Nonetheless, in the event 37 CFR 1.143 is construed to be applicable, the Applicants elect the base species B, referring to FIG. 15 and the articulating subcomponent species 4 referring to FIG. 16. Claims 1, 2, 3, 10, 13, 14 and 31 are drawn to the species B and 4 component combination.

III. Conclusion

A prompt and favorable action on the merits is respectfully requested.

Respectfully submitted,

MAGINOT, MOORE & BECK LLP

/James D. Wood/

James D. Wood
Attorney for Applicants
Registration No. 43,285

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Maginot, Moore & Beck LLP
Chase Tower
111 Monument Circle, Suite 3250
Indianapolis, Indiana 46204-5109
Phone: (317) 638-2922
Fax: (317) 638-2139